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IN THE

Supreme Court of the United States

October Term, 1942.

No. 358.

HOOPESTON CANNING CO., E. PRITCHARD, INC., *et al.*,

Appellants,

vs.

LOUIS H. PINK, Superintendent of Insurance of the State of New York, *et al.*,

Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW YORK.

BRIEF FOR APPELLEES.

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IN THE

Supreme Court of the United States

October Term, 1942.

No. 358.

HOOPESTON CANNING CO., a Corporation; E. PRITCHARD, INC., a Corporation; LANSING B. WARNER, INCORPORATED, a Corporation; HARRY M. BROWN and JAMES T. SMITH, PAUL E. EMERSON and BEN A. MORTON,

Appellants,

against

LOUIS H. PINK, as Superintendent of Insurance of the State of New York, and JOHN J. BENNETT, JR., as Attorney-General of the State of New York,

Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW YORK.

BRIEF FOR APPELLEES.

Opinions of the Courts Below.

The opinion of the Court of Appeals of the State of New York, concurred in unanimously (R. 192), is reported at 288 N. Y. 291. The prevailing and dissenting opinions of

the Appellate Division of the Supreme Court, Third Judicial Department (R. 186, 190) are reported at 262 App. Div. 446, and the opinion of Mr. Justice Schirick, who held the Trial Term of the Supreme Court (R. 154), appears at 25 N. Y. Supp. (2nd) 312.

Statement of the Case.

The case comes here by direct appeal under Judicial Code 237-a (28 U. S. C. A., § 344-a) allowed by Mr. Justice Jackson (R. 215) from the final judgment of the Supreme Court of the State of New York (R. 204) entered upon the remittitur of the Court of Appeals (R. 201). That judgment held valid and applicable to the reciprocal insurance business of appellants, who are authorized to transact business in the State of New York, the regulatory measures of that State against a claim of invalidity under the Constitution of the United States.

The appellants, comprised of the plaintiffs in two separate actions consolidated upon the trial (R. 31), sought a judgment declaring the invalidity of designated provisions of the New York Insurance Law and restraining the defendants, who are the Superintendent of Insurance and the Attorney-General of the State of New York, from proceeding thereunder (R. 14, 28). On January 1, 1943, Nathaniel L. Goldstein succeeded John J. Bennett, Jr., as Attorney-General and his substitution will be stipulated upon the argument.

Findings of fact were made by the Trial Court (R. 115-148), upon which judgment was entered sustaining the jurisdiction of the State over appellants but holding invalid some portions of the statute (R. 149 to 153). The Ap-

pellate Division reversed and directed judgment declaring the statute invalid and inapplicable to appellants (R. 181). It reversed three findings of fact and added four of its own. The Court of Appeals found the weight of evidence against the Appellate Division as to all but an "unimportant" portion of the reversed findings (R. 197) and directed judgment of reversal dismissing the complaint (R. 203).

The findings of fact, supported by evidence, present no issue for this Court (*Whitney v. California*, 274 U. S. 357), and we are concerned only with the question of the power of the State under the Federal Constitution with respect to a business such as that involved herein, with the volume, continuity, kind and degree of local activity found to characterize it. Probable jurisdiction was noted by this Court on October 12, 1942 (R. 325).

The Statutes.

The statutory provisions involved are each a part of the New York State Insurance Law of 1939 (Laws of 1939, Chapter 822; Consolidated Laws, Chapter 28), hereinafter referred to as the "Insurance Law." The pertinent portions are set out at length in the Appendices to the Brief for the Appellants and are, therefore, not repeated except as parts thereof may be hereinafter quoted in connection with specific points of the argument.

Statement of Facts.

It is natural that the appellants should emphasize the history of their own organizations and stress the general scope of their activities together with the studious concentration of the formalities of execution of contracts through the agent or attorney in fact in Chicago (R. 125; Finding

of Fact No. 18, requested by plaintiffs). The appellees, quite as naturally, have a different perspective and are concerned with the realities of the entire insurance transaction, particularly in its local aspects, not alone with respect to these appellants but with regard to the State's general regulations of any persons, organizations or corporations engaging in such transactions, designed to set adequate protective standards within its borders.

The appellant Lansing B. Warner, Inc., is not the insurer under these plans. The Corporation is but the agent or attorney in fact for the subscribers (R. 46). In the Warner Reciprocal Insurers plan it is called an agent and the subscriber is referred to as "the principal." The Canners Exchange instrument designates the corporation as an attorney in fact (Exhibits 5 and 6, R. 222, 225, admitted at R. 57). In the former the agent is authorized to "effect an exchange of insurance between the Principal and other insurers." The latter empowers the corporation to "exchange insurance among subscribers." By entering into a contract to exchange insurance through the attorney in fact, the subscriber becomes an insurer of every other subscriber as well as becoming himself insured (R. 86, 104). The attorney in fact is, therefore, but the conduit or instrumentality through which reciprocal agreements are made among many thousands of insurers to spread their individual risks. It appears from the testimony that it is necessary to have a large "spread" of subscribers in order that the system may work advantageously (R. 87). It is a necessary expedient that these agreements be formally accomplished through an agent in order to avoid thousands of signatures on each subscriber's contract and that there be a clearing house for the correlation of risks and adjustment of losses for the benefit of all on an experienced basis

(R. 85). The authority of that agent derives directly from the instruments constituting it an attorney in fact and those instruments as to New York reciprocal insurers, who thus obtain insurance on their own New York risks and become insurers of others in New York, as well as elsewhere, are executed in the State of New York (R. 101, 144, 197). There are about 925 subscribers throughout the country in the Canners Exchange group of whom 93 are located in New York. In the Warner's reciprocal group there are about 230 New York subscribers out of a total of about 2100 in the United States and Canada (R. 51).

About 50,000 contracts affecting New York State risks have been executed in the operation of the plans (R. 140). Gross risks written in this State by Canners Exchange have progressed from approximately $23,000,000.00 in 1921 to more than $81,000,000.00 in 1938; for Warners Reciprocal Insurers the increase in gross risks written in New York for the corresponding period has been from approximately $7,000,000.00 to over $38,000,000.00. As evidenced by net premiums, the business of Canners Exchange rose progressively from $105,786.86 in the year 1931 to $298,284.57 in 1938; Warners Reciprocal Insurers' receipts for a corresponding period went from $28,529.88 in 1931 to $95,162.82 in the year 1938 (R. 140-141).

Comparison of the New York business of the groups involved for the years 1940 and 1941 with the domestic reciprocal having the largest amount of business gives a clear indication of the great volume of New York coverage. Affiliated Underwriters a New York reciprocal insurer, in 1940 had net premiums in New York of $143,017.00 The Canners Exchange had such premiums amounting to $173,092.00, and the Warners Reciprocal group $105,669.00 (82nd Annual Report of Superintendent of Insurance,

State of New York, Vol. II, pages 85-a, 92-a, Legislative Document 1941, No. 34). In 1941 both of the groups herein far exceeded in volume of New York net premiums the business of the largest domestic reciprocal, which was again Affiliated Underwriters. The latter's net premiums amounted to $161,313.00, while the amounts for the Canners Exchange and the Warners Reciprocal groups were $248,092.00 and $197,293.00, respectively (Statistical Tables from New York Insurance Report 1942, Advance Printing, pages 98, 105).

Although the appellants' exchanges operate in all but a few States, the premiums or "deposits" received from New York risks substantially exceed those of other States. For example, Schedule T of the 1938 Annual Statement for Canners Exchange shows direct writings in New York amounting to more than three times those for Illinois, where appellants claim to have completely localized their business beyond the reach of any other jurisdiction (R. 321, Defendant's Exhibit P, admitted at R. 114). It is of interest here to note that a different form of contract is used in Illinois than elsewhere (R. 106).

In considering the nature of appellants' local transactions it is essential to bear in mind that the case involves no insurance company in Chicago with whom subscribers deal independently of each other and only as insureds, but that each agrees to underwrite a ratable portion of the loss of every other. The appellants dislike the term "underwriter" as applying to a subscriber but agree that each bears his portion of the losses (R. 86). While there is no formal legal entity, the subscribers have a community of interest and are dependent upon each other to keep losses low (R. 90, 143). The cost is borne by the payment of

initial and subsequent "deposits" for which separate accounts are maintained (R. 61) although the funds are commingled (R. 143), out of which losses and expenses are paid, a reserve fund accumulated and "savings" returned to the subscriber (R. 64).

Against this background of insurance participated in directly by all those protected thereby, the activities in the State of New York by them and on their behalf can be best appraised with respect to the development, administration and general conduct of the business. The appellants agree that they are interested in keeping down losses and in bringing in only solvent and careful new members who will be good moral hazards (R. 89). There are no agents labeled "solicitors." Instead, a present subscriber usually "recommends" the plan to one in the same business and either he or the prospective subscriber will write in for an explanation (R. 53 and 54). The representatives of appellants, who are sent out from Chicago, are not "professional" but "insurance" engineers (R. 54, 148). The present subscribers are consulted to determine the standing of the prospect (R. 54) and an investigation is made from New York sources as well as others (R. 126), including correspondence with New York subscribers (R. 93, 94). One of the engineers then calls upon the prospect to explain the operation of the plan and inspect the property which is to be the subject of the risk (R. 92). The interview by appellants' engineer with a prospective subscriber may take place before the latter has sent an application to the Chicago office and before he has made any request for information (R. 100, 144). The engineer may "recommend" acceptance of a new subscriber to the Chicago office (R. 55). His activities incident to the determination of such a recommendation take place in the

State of New York, as do those of the present members whose interests are directly affected by the procurement of new subscribers (R. 94). Whether called "solicitation" or "recommendation" and "explanation", the method pursued in New York State is that by which new members are procured for an insurance plan by and on behalf of the persons who are an integral part of it.

The engineers (agents) likewise "keep in fairly constant touch" with subscribers as to the best ways to lower their hazards by installation of protective devices and taking fire retarding measures (R. 54). They "service" outstanding contracts in keeping risks low as well as investigate and consult with prospective subscribers in order to determine their qualifications from the standpoint of their practices in managing the property to be insured (R. 55, 98). Such activities can be engaged in only at the physical location of the risk (R. 98).

Other duties essential to the operation of the plan to protect the interests of all parties to it necessarily take place in New York. In the event of a substantial loss an inspector visits the scene to examine the ruins, determine the causes of loss and report so that the risk may be minimized in the future (R. 66) and to furnish a basis of adjustment of the loss with the subscriber (R. 112).

Both groups of insurers are authorized by the Superintendent of Insurance to transact business in the State of New York (R. 71, Plaintiffs' Exhibits 16 and 17, R. 280, 281) and have paid New York taxes since 1935 or 1936 (R. 73). They are desirous of retaining their license to do business in this State (R. 74) because of the advantages deriving to New York subscribers, who have the right to

sue in New York courts, because the Superintendent of Insurance may be appointed their attorney for service of process and because annual statements are filed with him for the inspection of any subscriber who desires to see them (R. 75). The reasons were eloquently characterized by appellants' counsel in his opening statement to the Trial Court as follows;

> "We want to meet the subscriber, your citizen of New York, on his home ground, * * *" (R. 40).

In the same voice appellants vigorously assert that they are not doing any business whatever in New York State and deny that they are within reach of the State's regulations.

Summary of Argument.

POINT I.

Appellants are engaged in the business of insurance. Reciprocal insurance is subject to State regulatory power. Appellants carry on business in the State of New York. The question of doing business is a primary one of fact. Appellants' transactions fall within the applicable statutory definition and the principles of the adjudicated cases. The formal execution of the contract is not decisive upon any realistic view of the nature of the appellants' transactions as a whole, the continuity and volume thereof and the substantial local activity essential thereto. In such cases the location of the risk is an important factor in determining the extent of the State's protective power. Appellants have subjected themselves to the regulatory jurisdiction of New York. Their authorization to do business requires compliance with the applicable provisions of the

Insurance Law and they may not be licensed for special or limited purposes of their own apart from the transaction of business in the State.

POINT II.

The Insurance Law was not an attempt by the State of New York to regulate matters beyond its borders and outside its local interest, or to interfere with private contractual rights. Regulations justified by proper governmental interest in the subject matter may not be invalidated because of incidental effect beyond the State. The assailed provisions concern matters within the legitimate concern of the State of New York and, considered in their application thereto, are each a valid and reasonable regulation.

ARGUMENT.

POINT I.

Appellants are doing an insurance business within the State of New York and are subject to licensing and regulation under the New York Insurance Law.

A. Appellants are engaged in the insurance business and are subject to regulation in the public interest.

The State Courts below have found that appellants are engaged in the insurance business (R. 117, 143, 163, 197). In pressing their appeals to the Court of Appeals appellants did not contest this holding and do not do so here.

The exchange of similar contracts in the State of New York was held to be the business of insurance in *People*

v. Roschli, 275 N. Y. 26, 29. The business of one of the exchanges involved in the present case was also the subject of litigation in *Thomas Canning Co. v. Canners Exchange Subscribers at Warner Inter-Insurance Bureau*, 219 Mich. 214, 189 N. W. 214, where the highest Court of Michigan held that the exchange of inter-insurance contracts is the business of insurance.

Since the decision of this Court in *German Alliance Insurance Company v. Kansas*, 233 U. S. 389, it has not been open to question that the business of insurance "so far affects the public welfare" as to be within the regulatory jurisdiction of the State and, indeed, to require exercise of that power (p. 412). While it involves personal contracts of indemnity, they have greater public consequence than those the effect of which stops with the individual. One of the fundamental grounds of the public interest expressed by this Court is the function of insurance to distribute the expense of loss and disaster over a wide area. Contracts of insurance were said to be interdependent and not to be regarded singly. There is, therefore, an even more direct public interest in the safeguarding of plans of reciprocal insurance, like those here involved, wherein members of the public undertake directly by many inter-related contracts with each other to protect themselves from the hazards common to their businesses.

B. Appellants are carrying on the business of insurance in the State of New York.

1. *The provisions of the Insurance Law with respect to "doing business."*

Article IV of the Insurance Law sets out licensing requirements for foreign insurance corporations in New York State. Section 40 provides in part:

"§ 40. Insurer's license required; issuance, revocation or suspension of license

"1. No person, firm, association, corporation or joint-stock company *shall do an insurance business in this state unless authorized so to do by a license issued and in force pursuant to the provisions of this chapter,* or unless exempted by the provisions of this chapter from the requirement of having a license to do business." (Emphasis supplied.)

The phrase italicized above—"do an insurance business"—is defined in the following section:

"§ 41. • • •

"3. The term 'doing an insurance business,' within the meaning of this chapter, shall be deemed to include (a) the making, as insurer, *or proposing to make as insurer,* of any insurance contract, and • • • (c) *the doing of any kind of business,* including a reinsurance business, *specifically recognized as constituting the doing of an insurance business within the meaning of this chapter and* (d) the doing or proposing to do any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this chapter." (Emphasis supplied.)

In order to round out the applicable definition of "doing business" reference must be made to Article XII, dealing with reciprocal insurers. Section 410 of that Article, defining "reciprocal insurer," expresses the essential feature of the business under scrutiny herein, and further defines the "doing of an insurance business" by reciprocal companies as including "any act which effects, aids or promotes the doing of an insurance business in this state by any reciprocal insurer." A "reciprocal insurer," as the term is used in the Insurance Law, is any aggregation of inter-insurers operating individually and collectively through an attorney-in-fact having authority to obligate the subscribers (or inter-insurers) severally.

Section 410 (1), by Section 41 made a part of the definition of "doing business" in the Insurance Law, establishes a statutory signpost pointing out the *self-insurance* feature as one to be reckoned with when reciprocal companies are the subject of the inquiry.

The above definitions reveal that the Legislature did not intend to stop by inquiring whether a foreign insurance company is "making" contracts, or "executing" contracts within New York State before exacting compliance with our licensing regulations. Simply "proposing to make" insurance contracts in New York State brings the foreign company within the Insurance Law. For the purpose of clarifying terminology repeatedly used in this and appellants' brief it should be noted at this point that the phrase "making contracts" may be used in its more inclusive sense to embrace the various steps necessary to effectuate insurance. That meaning is to be distinguished from the one usually intended by appellants, who persistently emphasize the one aspect of "executing" or "consummating" the contract, or "making it binding."

The New York Courts did not, in deciding this case, nor do we, rest upon the mere findings that the specific statutory requirements of "doing business" alone have been satisfied. The findings of the State courts, herein referred to, are broad enough to support their decision in conformity with the realities of appellants' transactions and the application of established principles governing the reach of State power under the Constitution.

2. *The principles applicable to the issue of "doing business."*

There is presented here no issue of the validity or interpretation of private contracts as between the imme-

diate parties thereto *(cf. Boseman v. Connecticut General Life Insurance Company,* 301 U. S. 196), nor of the personal liberty of one seeking insurance to go beyond the borders of the State to obtain it, which lies at the basis of the holding in *Allgeyer v. Louisiana,* 165 U. S. 578, and those cases stemming from it. This is the short answer to appellants' argument, derived from the formal execution of contracts in Illinois by the attorney in fact on behalf of the insurers, that such contracts must be governed by Illinois law exclusively. The issue here is between the State exercising the public power and those conducting a reciprocal insurance business with respect to whether their operations in the course thereof bring them within the reach of the State's jurisdiction.

No question arises as to the power to regulate such a business deriving its original authority from a foreign State where it is transacted within the regulating State. Fundamentally, that question is one of fact to be determined upon the circumstances of individual cases *(International Harvester Company v. Kentucky,* 234 U. S. 579).

The cases present no rigid mathematical formula determining when business conducted across State lines is carried on or done in a State within the meaning of that State's statutes. In fact, this Court refuses to chart a course to be followed in the cases. *(St. Louis, Southwestern Ry. Co. v. Alexander,* 227 U. S. 218 (1913); *International Harvester Co. v. Kentucky,* 234 U. S. 579, 583 (1914).) But appellants offer such a formula. They argue: The contracts of insurance herein are "made" in Illinois. In expanding this idea they refine "made" in Illinois to "executed" in, "consummated" in, or "made binding" in

Illinois. An insurance company is doing business only in the State where the insurance contract is executed or where the contract is made binding, they contend. In this case that State is Illinois; therefore, they conclude, appellants are not doing business in New York State and cannot be required to fall in line with New York State regulation.

Appellants add a further criterion in insisting they are not doing business here because there are allegedly no "solicitors" present in this State. They derive their definition of "solicitation" from cases involving traditional methods of transacting insurance or other businesses by means of paid employees or agents known as "solicitors."

In the first place, reality and a fair appraisal of the essence of appellants' reciprocal insurance business warrant a more discerning definition of "solicitation." Secondly, we are free to inquire beyond the outward symbols like "execution" and "solicitation" to discern whether or not businessmen are "doing" their business, as did the Court of Appeals below.

The broad power of the State to regulate the business of insurance conceded by this court's decisions has not been characterized by restrictive formalities in the case of foreign corporations. Where the State has a legitimate interest in the subject matter and there are phases of the conduct of the business within its reach, its reasonable regulations will be upheld. *(Osborn vs. Ozlin,* 310 U. S. 53.)

The fact that agents or employees of foreign corporations are not permitted to effect binding contracts in the

State claiming jurisdiction does not preclude a finding that the foreign corporation is doing business therein.

International Harvester Co. vs. Kentucky, 234 U. S. 579 (1914);

Pennsylvania Lumbermen's Mutual Fire Ins. Co. vs. Meyer, 197 U. S. 407, 414, 415 (1904);

Tauza vs. Susquehanna Coal Co., 220 N. Y. 259, 265 (1917).

In the *International Harvester* case the foreign corporation restricted the activities of its "travelers" in Kentucky to taking orders "subject to the approval of the general agent outside of the State" (234 U. S. 579, 584). The travelers did "not have authority to make a contract of any kind in the State of Kentucky." Nevertheless this Court held the company was doing business in Kentucky, giving the latter State jurisdiction in order to prosecute the company for violation of its anti-trust laws. As in the case at bar that litigation involved discipline and regulation—more than a mere controversy between private individuals.

And in *Thomas Canning Co. vs. Canners Exchange*, 189 N. W. 214, 217, 219 Mich. 214, where the business of appellant herein, Canners Exchange, was under investigation, the highest Court of the State of Michigan stated that, to the extent the company authorized its agents to engage in various activities within Michigan, "it is doing business in this state regardless of whether the policies it issues are to be construed as contracts made in this or another state."

In *Equitable Life Society vs. Pennsylvania*, 238 U. S. 143, the insurance company authorized to do business

therein was held within reach of Pennsylvania's taxing power as to premiums paid outside the borders of that State on the ground that it was doing business in the State inasmuch as "many incidents of the contract are likely to be attended to in Pennsylvania". In *Palmetto Insurance Co. vs. Conn*, 272 U. S. 295, a Michigan contract of insurance under which a certificate of insurance was sent to a third party who purchased an automobile in Ohio was held to subject the company to Ohio's taxing power on the ground that such acts made "effective" in Ohio the agreement to insure for the benefit of purchasers of automobiles covered thereunder.

If there be distinction in the various cases with relation to doing business based on the different issues to which that question is relevant, namely service of process, taxation and regulation, it is one of degree only.

Appellants may not wholly dismiss as inapt all analogies found in those decisions. In any event, in *Osborn vs. Ozlin*, 310 U. S. 53, this court has brought to full recognition the principle that the interest of a State in local risks insured under contracts executed elsewhere in the course of essential local activity incident to the "organic whole of the insurance business" supports regulatory jurisdiction.

The court will take a realistic view of the elements involved in a question of carrying on business within the borders of this State to the end that the authority of the State may not be evaded by subterfuge or emphasis on mere formulas and technical distinctions.

Hooper vs. California, 155 U. S. 648, 658.

Palmetto Fire Insurance Co. vs. Conn, 272 U. S. 295, 305.

3. *The Nature of Appellants' Transactions in New York.*

Consideration of appellants' local activities in the State of New York reveals a course of "doing business" therein involving matters which are of the very essence in formulating and effecting their contracts of insurance and in performing the obligations assumed thereunder. It must first be reiterated that the actual insurers are the subscribers themselves, including those resident in New York.

Judge Conway, writing the opinion for the Court of Appeals, placed special emphasis upon the self-insurance feature of appellants' business and its obvious implications (288 N. Y. 291, 299-300).

> "Each subscriber and each principal is an insurer and initiates within this State his contract of inter-insurance. This is not a situation where the applicant for insurance to be issued to him solely as an *insured* mails an application for that insurance to a foreign company in a foreign State. In this instance the insurer, resident here, signs a power of attorney or appointment of agent within this State and confers thereby power upon the attorney or agent to execute for him a policy of insurance so that he, our resident, may become the insurer reciprocally of hundreds of risks throughout this country and in Canada. Our resident is an insurer and it matters not where his attorney or agent executes the contract of insurance by which he is bound. Thus Insurance Law, section 41, subdivision 3, now provides: 'The term "doing an insurance business," within the meaning of this chapter, shall be deemed to include (a) the making, as insurer, or *proposing to make as insurer*, of any insurance contract * * *.' The two reciprocal insurers are but the aggregations of the subscribers and principals. (Ins. Law, §410.)" (R. 197.)

The document which forms the keystone of the entire system and from which springs the initial authority by

which residents of New York are constituted insurers of the risks of other subscribers, including those in that State, is the power of attorney. This absolute essential to the effectuation of the formal contracts under which New York residents assume the obligations of insurers, as well as obtain protection of their own risks, is executed in New York. The contracts themselves are merely signed in Chicago by the agent thus authorized because of the practical impossibility of exchange of the documents among the real parties.

However, appellants still insist that New York State may not regulate their business here because the applications of new subscribers are allegedly *accepted* at the Chicago office. The place of acceptance of a contract may be significant in its proper judicial setting; *e. g.*, in questions arising in the law of contracts, or questions concerning purely choice of law where the sole issues revolve about the acts of execution of contracts as determinative of vested rights. Where, however, there is a good reason to look at the whole business under inquiry in its unbroken sequence, there is no rule of law that gives controlling effect to the sole item of acceptance. The acceptance of the application by the agent or attorney realistically calls for clerical activity or paper work, at most, at the Chicago office and does not in any event constitute the contract of insurance.

An illustration of the formal and incidental character of this clerical step can be found in the admission of appellants' witness that insurance engineers perform services within the State of New York essential to effect a binding agreement between the New York resident and the other subscribers. To guarantee the soundness of their plans and develop the low loss ratios of which they boast,

appellants concededly and necessarily depend to a great extent upon the accuracy of their "engineers'" appraisals and investigations made at the locus of the property insured. As a practical matter the stamp of approval that substantially determines whether a prospect will be acceptable is that of the engineer who surveys the former's business and properties on the spot. Furthermore, appellants tell us that the amount of the deposit required of subscribers (corresponding to a premium charge) is "determined by the agent, taking into consideration the factors of risk and size and things of that kind" (R. 35, 60). Here again personal investigations of the engineers, clearly involving presence and activity in New York State in the case of applicants resident here, play an important part in the transaction of appellants' insurance business. It is not a mail-order, shipped-direct-from-Chicago business, but is rather custom-made and adjusted on the scene to fit the customer's needs.

In adjudicating cases involving activities of insurance companies outside of the state of their creation this Court has paid close attention to matters of *performance* of the policy, looking beyond the act of executing the insurance contract. In a leading case on the question of "doing business", *Pennsylvania Lumbermen's Mutual Fire Insurance Co. v. Meyer*, 197 U. S. 407 (1905) this Court noted the practice of the Company of sending its agents into the State of New York when a loss by fire occurred there to property insured by it, for the purpose of adjusting the amount of the loss. All other negotiations were by mail. The Court made these observations at 197 U. S., pages 414-415:

> "Was the company doing business in New York State? Nearly one-third of the amount of its total fire risks was in that State when these policies were

> issued and when the loss occurred. If it be conceded that the contract was made in Philadelphia, it does not follow that all its business was therefore done in the State of Pennsylvania. * * * A fire insurance company which issues its policies upon real estate and personal property situated in another State is as much engaged in its business when its agents are there under its authority adjusting the losses covered by its policies as it is when engaged in making contracts to take such risks. * * * We think it would be somewhat difficult for the defendant to describe what it was doing in New York, if it was not doing business therein, when sending its agents into that State to perform the various acts of adjustment provided for by its contracts and made necessary to carry them out."

See also *Commercial Mutual Accident Co. v. Davis,* 213 U. S. 245 (1909).

In the case at bar the insurance "engineers" of the appellant reciprocals are sent to the scene of the ruins where a substantial loss has been suffered to examine the property, appraise the damage, investigate the cause of fires, and perform similar services which cannot be accomplished at long range.

When we speak of "adjustment" of losses, we do not have reference alone to the final decision as to the amounts to be paid the assureds or the act of mailing the check to cover the obligation under the policy; we refer to the sum of the acts necessary to arrive at the ultimate figure. And the activities of the inspectors of appellants in this State in this connection are certainly a necessary part of that process. Similarly the courts, emphasizing "adjustment" activities, appear to use the word in its larger sense. Appellants dismiss these acts of its inspectors as being entirely without significance by alleging they are not "affirmative" acts (R. 68). Without puzzling over their defini-

tion of "affirmative", we submit that these activities, however characterized, shed much light on appellants' local transactions.

The insurance "engineers" work with subscribers to see that fire walls, sprinkler systems, or other such devices are put in if necessary to qualify the prospect or reduce the possibilities of loss of properties already insured. In the words of appellants' own Counsel:

> "These field representatives, these trained engineers, do nothing but service these contracts, and if any one in the vicinity wants one of these representatives to come and look at his property to see if he can qualify, why, naturally a field representative will go and survey it." (R. 56.)

Mr. Justice Frankfurter of this Court noted in *Osborn v. Ozlin*, 310 U. S. 53, (1940):

> "A policy * * * must be 'serviced'—an insurance term for assistance rendered a customer in minimizing his risks. * * * Only to a limited extent can risks be minimized at long range; local activity is essential."

And compare *Bothwell v. Buckbee, Mears Co.*, 275 U. S. 274, 278 (1927).

Even before the insurance policies of New York subscribers in appellants' companies become effective these same "engineers" have tasks to perform in this State. An "engineer" calls upon a recommended prospect and investigates his properties. To investigate what appellants term the prospect's "moral hazard" the "engineer" is compelled to look at the various "housekeeping" habits of the prospect at the plant to be insured. The layout, structure, surrounding conditions and other physical characteristics are closely studied.

The fact that the insurance "engineers" are in personal contact with applicants or prospects may have had something to do with the popularity and expansion of appellants' insurance plans. Another contributing factor, described in the record by appellants themselves, is the use of the device of "recommendation" by existing or present subscribers as a means of bringing new customers into the exchanges. This method of selling insurance is, in a realistic sense of the word, "solicitation", and when performed by New York subscribers (assureds-insurers), it takes place *in this State*. Appellants insist upon clinging to the traditional notion of "solicitation" which they allege is a prerequisite to the finding of "doing business". Their concept would require the services of agents, labelled "solicitors", who must be traced canvassing from house to house, or pursuing usual channels of trade in the State looking for prospects. They refuse to admit, before the courts at least, the effectiveness of modern, more subtle methods of doing business, such as the device of *intra-mural* "recommendation".

We have shown in our statement of facts the volume of the appellants' risks in New York in relation to those of domestic reciprocals and to their own coverage in other States, as well as the steady growth of the business pertaining to New York over a period of years. Clearly, these figures indicate no sporadic or isolated transactions but a continuous, large and growing volume of business conducted with all the essential local aspects hereinbefore discussed, resulting in engagements by and for the protection of New York residents with respect to property in that State of great value.

This Court consistently stresses the importance of measuring the volume and frequency of the local transac-

tions in determining whether business is being done in a State.

Pennsylvania Lumbermen's Insurance Co. v. Meyer, 197 U. S. 407, 414-415;
International Harvester Co. v. Kentucky, 234 U. S. 579, 585-6.

In reliance upon the doctrine of the *Allgeyer* case, appellants have attempted to read out of this case all consideration of the location of the property insured, within the boundaries of the State which has applied its regulatory measures to the insurance plan through which it is sought to protect that property. But if location of risk alone does not give jurisdiction, it does not follow that it is not an important factor, when allied with local activity in the making and performance of insurance contracts, in determining the extent and nature of the State's protective power. A distinction may be observed between *ambulatory* insurance, such as life and casualty, and that on physical property located permanently within a State (cf. *Minnesota Commercial Men's Association v. Benn*, 261 U. S. 140). Obviously, in its exercise of power to "set the standard of security" for insurance within its borders (*Firemen's Insurance Co. v. Beha*, 30 Fed. [2d] 539, 542, aff'd 278 U. S. 580) the State's paramount concern is with the extent and quality of the protection given to property against the hazards of loss and disaster which can only occur within its borders. Such protection is essentially of primary local concern, much more real than that which has to do only with the formal act of binding a contract which may be done anywhere.

Allgeyer v. Louisiana, 165 U. S. 578, in so far at least as it is invoked to prevent a State seeking to extend its

regulatory power to insurance upon property within its boundaries and enjoying its protection, is of much diminished authority (*Osborn v. Ozlin*, 310 U. S. 53, 66). Its force is limited to those instances where an individual seeks, apart from local transactions, to exercise his freedom of contract to procure insurance for himself solely as an insured, or where the State seeks too broadly to reach any insurance so procured covering a local risk, as in *Fidelity & Deposit Co. v. Tafoya*, 270 U. S. 426, but where insurers "have subjected themselves to local control" and the insurance of local risks is produced and serviced through local activities, the State has a "definable" and legitimate interest supporting regulatory measures not affected by the execution of the contract elsewhere (*Osborn v. Ozlin*, 310 U. S. 53).

Appellants' elaborate attempt to distinguish the *Osborn* case but emphasizes its application to the case at bar. It takes the form of asserting that the contracts involved were Virginia contracts because countersigned by Virginia agents although the Court did not rest its holding on any such finding and refused to judge the legislation by "abstracting an isolated contract written in New York" expressly holding that Virginia "had not sought to prohibit the making of contracts beyond her borders", but was claiming merely "that her interest in the risks which these contracts are designed to prevent" warranted the control imposed (pp. 62, 63). A further distinction is sought to be noted in activities found to constitute the doing of business in Virginia. These related to the production and servicing of insurance on Virginia risks and differ insubstantially from analogous activity in New York in connection with the insurance plan herein at issue. The *Osborn* case did not represent an attempt to bring the formal execution

of the contract within the borders of Virginia or to base a regulation on that factor. The measure therein concerned was designed to assure the active use of resident agents for the local activities of procuring and servicing policies covering Virginia risks in the transaction of insurance business in that State and thus to give to its own residents a "share in devising and safeguarding protection against its local hazards".

4. *Appellants may not retain a license authorizing the transaction of business in New York for a limited or special purpose free from any control by the State of their local activities.*

Appellants have sought and obtained authority to transact business in New York and are admittedly anxious to retain it and the advantages deriving therefrom. It would seem logically to follow that they have subjected themselves to local control; yet they vigorously assert their immunity from any enforcement whatever of the restrictive regulations which condition such a license (Insurance Law, §§ 42(5), 411, 414(2) and 422(1).

Such claim is not made only in respect to some portion of the business asserted to be carried on beyond the local interest of New York, but to the entire course of appellants' business, both within and without the State. It presents the anomalous spectacle of insistence upon a license from a State in which no business is admitted to be done and the regulatory interest of which is denied. The authorization itself reenforces jurisdiction as to local aspects of the licensees' activities (*Osborn v. Ozlin*, 310 U. S. 53; *Equitable Life Society v. Pennsylvania*, 238 U. S. 143; *Compania de Tabacos v. Collector*, 275 U. S. 87).

No possible view of constitutional right supports appellants' claim that they may secure or retain a license from the State for purposes of their own, apart from the conduct of business therein. If the license has value to them it must be inevitably derived from business activities in proposing to make and effectuate contracts of insurance within the State. In that event they may have the license only with the conditions of its exercise annexed. If no such activities were, in fact, engaged in the license would be but a false seal of approval which the State could not be compelled to keep in force with respect to an insurance business not falling within its local concerns.

Appellants protest that the Court of Appeals misconceived their argument in stating that they contend that although authorized, they seek to be treated as though they were not (R. 198, Brief, p. 26). This is, nevertheless, the necessary effect of the argument. They have no right to freedom from regulations if transacting business in the State of New York and no right to a license if not transacting such business.

Looking past appellants' concededly zealous attempt to withdraw their insurance operations from the control of other states by a concentration of the documentary and administrative features in Illinois, and viewing them as an "organic whole" there is abundant support for the finding of the courts below that they are carrying on their business in the State of New York and subject to its regulatory jurisdiction.

POINT II.

The assailed provisions of the Insurance Law do not invalidly extend beyond the borders of the State of New York to matters which are no part of its local concern. They are each a reasonable and valid regulation of business within the legitimate interests of the State.

A. The statutes have no invalid extraterritorial effect.

Appellants' claim of invalid extraterritorial operation for the regulations assailed presents no issue of wisdom nor even of whether matters outside the State may be affected, but only a narrow one of power (*Osborn vs. Ozlin*, 310 U. U. 53, 62). The inquiry is only whether the State has "taken hold" of a matter affecting its local concerns. "Incidental repercussions" beyond its borders cannot curtail the power to deal with its own affairs.

Incorporation or organization in some other state and the spread of business and activities over other states cannot control or nullify the public policy of the state with respect to business done within its borders (*Atlantic & Pacific Tea Company vs. Grosjean*, 301 U. S. 402).

The preceding discussion of the essential and extensive local activities of appellants sustains, we believe, the interest and power of New York to devise measures for safeguarding such insurance against local hazards and it need not stay its hand because the system extends into other states and the effect of the regulation may be felt in its general operation. New York's interest in the regulation of business done locally is not delegated by the Constitution to the State of Illinois, nor to any other state wherein

some features of that business may be consummated, nor does appellants' desire for uniformity of contracts gain them immunity from local regulation.

The policy of standardizing contracts nationally may have merit from the isolated viewpoint of business expediency. But the paramount interests of the state will not be denied by the Federal Constitution merely because they conflict with the contract provisions dictated from the home office. *Modern Woodmen vs. Mixer*, 267 U. S. 544, 551 (1925), *Royal Arcanum vs. Green*, 237 U. S. 531 (1915), and *Boseman vs. Connecticut General Life Insurance Co.*, 301 U. S. 196 (1937), cited by appellants at pages 17 and 18 of their Brief, do not establish any constitutional principle to the contrary. Those cases did not raise questions of the validity of statutes of the forum announcing a public policy to be followed with respect to business done locally. To borrow from appellants' terminology, the "door" has always been "opened to all manner of conflicting regulations" by the states with respect to insurance business. Appellants must seek comfort in uniform state legislation, rather than in the Federal Constitution.

Allgeyer vs. Louisiana, 165 U. S. 578, must be confined, as heretofore urged, to attempts to penalize an insured seeking to contract beyond local borders and without local activity by the insurer. Even the implications flowing from that holding have been cast in doubt (*Osborn vs. Ozlin*, 310 U. S. 53, 66) and it throws no obstacle in the way of regulation by a state of foreign insurers engaged in the insurance of local risks surrounded by substantial degree and character of local activity.

Here the state regulation is not directed at matters outside its territory nor does it palpably attempt to bring

within state jurisdiction any transaction or relationship not connected with local interests. The regulations in question are directed only to authorized foreign reciprocal insurers doing business in the State of New York and applies to them the same restrictions which govern domestic exchanges (Insurance Law, §§ 411, 412, 422). If such regulations were invalid because exerting an effect upon insurers' operations elsewhere, then any regulation of a foreign insurer, such as of its financial condition, which could not be complied with wholly in New York would be equally void. The indirect effect elsewhere would countervail direct regulation for legitimate local purposes, "an intolerable limitation" *(Firemen's Insurance Company vs. Beha,* 30 Fed. (2nd) 539, affirmed 278 U. S. 580). It is not of itself an objection to the exercise of otherwise legitimate state power that its effect may be transmitted through integrated activities out of which the state's interest arises.

Appellants can hope for little support on this issue from cases arising out of a particular insurance policy, in which the public policy of the state (usually of the forum) is drawn in issue indirectly. In such cases the court's sole concern may be the circumstances surrounding the particular insurance contract rather than the company's entire organic course of business within the state. This Court has accordingly held the state enactment to be invalidly applied where "nothing in any way relating to the policy sued on has ever been done in the State of the forum" *(Home Insurance Co. v. Dick,* 281 U. S. 397, 408, 1930); or that "the interest of the forum has but slight connection with the substance of the contract obligations." *(Hartford Indemnity Co. v. Delta & Pine Land Co.,* 292 U. S. 143, 150, 1934.) In *New York Life Insurance Co. v.*

Head, 234 U. S. 149 (1914) the insured, covered by a life policy, was not even a resident of the State of the forum, and the transaction in issue was a loan taking place in the State of New York. The Missouri statute could not be validly made to govern that transaction; but the same statute was upheld when applied to a loan upon a policy issued to a Missouri resident in *New York Life Insurance Co. v. Cravens*, 178 U. S. 389.

B. The particular regulations attacked are reasonable and valid.

Upon judicial scrutiny of the validity of the statutory regulations herein, full scope must be allowed to the play of legislative judgment in determining policy and the needs of the public welfare. It is fundamental that such determinations will not be overturned unless patently unrelated to the public purpose at hand, or so arbitrary as to exceed the bounds of due process *(LaTourette vs. McMaster*, 248 U. S. 465, 467).

The statutes here in question must be weighed as general expressions of the state's concern with the safe and faithful conduct of insurance. The discussion of them which follows is predicated upon the finding, supported by the record and the authorities alike, that appellants are engaged in the business of insurance within the State of New York.

Section 412 (1)

Appellants' objection to this provision is that it is an unlawful discrimination to restrict new subscribers to those who have met assets of not less than $10,000.00. It is contended that it is a standard based on a "man's mere

property status". It is not, however, by any means, a social or property test applied to some right of citizenship. The requirement is clearly related to the ability of subscribers to bear the obligations assumed in a reciprocal insurance plan to the end that the financial stability thereof be assured. In safeguarding the financial structure of companies in which every assured is an insurer, it is not unreasonable to impose more rigid requirements than in the case of stock or mutual company policy holders.

Viewed in this light, the Legislature cannot be said to have arbitrarily exercised its judgment in respect to the standard fixed. Present members of the Exchanges herein need but to comply with Section 418 requiring the maintenance of an operating reserve in order to qualify for renewal contracts. Appellants' business will not be disrupted by the regulation.

Section 417 (1)

This section requires the inclusion in any subscriber's contract of a provision "for a contingent several liability for assessment of the subscriber as an inter-insurer on the risks of every other subscriber in an amount not less than one nor more than ten times the amount of and in addition to the annual premium expressed in such contracts of insurance issued to the subscriber by the reciprocal insurer".

It is difficult to follow appellants' argument that unlimited liability is essential to the operation of their plan of insurance and that the limitation imposed by the section would destroy it. That it is termed a "contingent" liability has no effect. The whole liability assumed is contingent upon the amount of losses and expenses.

Subdivision 2 of the statute gives the key to when the occasion for such assessments may arise by providing therefor when assets are "insufficient for payment of losses and expenses" and to satisfy other named liabilities.

No constitutional obstacle readily appears to prevent giving effect to the legislative judgment that it is wise to impose such a limitation upon what could otherwise conceivably be a crushing and ruinous burden upon businessmen so underwriting each other's losses. That limitation safeguarding the individual subscriber is accompanied by the requirement of a special contingent fund under Section 413 (2) protected from impairment by dividends or refunds, such as the "savings" of appellants, or by withdrawals of retiring subscribers, looking to the general stability of the plan and lessening the probability of assessments. Nor does any tenable objection inhere in the absence of or different limitations under other types of insurance.

Appellants assert the economy of their plan of insurance and insist that their annual deposits have been sufficient to return a dividend or "savings" to the subscribers. This would appear to make the limitation of Section 417 (1) an entirely academic one as to them, until such time as such assessments may have to be imposed when the protection of the statute will inure to the benefit of the individual subscribers. The regulation in no way interferes with or arbitrarily alters the normal working of the plan or liability of the subscribers.

The argument that there is no premium under the reciprocal plan calls for a word as to appellants' attempt to find constitutional objection by confusion of terms. The

use of the single term common in insurance terminology as a measure of convenience for annual statement purposes, for tax purposes (Insurance Law §550(1), 552(5b)) and in the administration of the rating laws of the State (Insurance Law, Art. VIII) has been legitimately prescribed and has posed no difficulty. The deposit made under such plan is calculated on the basis of coverage and character of risk, in accordance with the probably cost of the insurance and is obtained in advance, making necessary the returns by way of dividends, refunds or returns of "deposits" (413(2)) or "savings" as appellants term them. Presumably, the limitation will motivate careful determination of such deposits. The application to them of the terms "premium" or "premium deposit" furnishes no ground for holding unconstitutional the statute in which they are employed. The highest court of the State has affirmed such usage in respect of appellants' practice.

Section 418 (1)
Section 418 (3)

Appellants' chief objection to Section 418 (1) appears to be that it requires the building up of operating reserves for each subscriber larger than is the present practice or than they yet have had need for. Appellants recognize the need and desirability of this type of surplus, for their present practice is to accumulate such a reserve out of the "savings" to subscribers after the deduction of losses and expenses. The argument that the amount of such reserves is too high is one to be addressed to legislative judgment and policy. It does not appear to be so far beyond the needs of safeguarding the ability of reciprocal insurers to meet their obligations or beyond appellants' existing methods as to be an arbitrary and impossible burden.

Again, the quibble over the use of the term "earnings as an underwriter" has no constitutional significance. Obviously, it refers to the "savings" on the unabsorbed portion of premium "deposits" and is clearly understandable in relation to them. The Legislature was not required to adopt the individual nomenclature of various insurers. The accumulation can derive only from the actual "earned" surplus, and can only operate to strengthen the reciprocal by building up a surplus for the protection of the individual subscriber who may have loss claims.

That Section 418 (3) places some restrictions on the theory that subscribers have complete title to their several accounts by dedicating the reserve first to payment of claims of policyholders and creditors of the reciprocal does not invalidate the requirement. The subscriber may withdraw such accumulations upon retirement from the plan but subject to such claims. Obviously, a participant in reciprocal insurance has no right to demand the return of accumulations as his absolute property held in a mere depositary free from the very obligation for which they are required to be reserved. The regulation prescribes a general standard for the safe conduct of direct inter-insurance. Clearly, it imposes no unrelated or oppressive burden, nor does the absence of such a requirement with respect to insurance companies, whose policyholders are not likewise direct insurers, constitute a ground for striking down the legislation.

Section 130
Section 422 (1)

Section 130 prohibits any licensed foreign insurer from issuing, delivering or otherwise effectuating a contract of insurance in the State of New York except through a resi-

dent licensed insurance agent of the State or countersigned by such an agent. Appellants' objection admittedly derives mainly from their contention that New York has no jurisdiction over any of their activities. The Court of Appeals has held the statute applicable to plaintiffs since they are doing business in New York State and thus effectuating their contracts therein. The meaning of the statute has been settled by that Court's decision. The propriety of such a provision and the power of the State to impose it are within the controlling authority of *Osborn v. Ozlin*, 310 U. S. 53, which we have heretofore examined on the basic issue of jurisdiction. The Legislature may well have believed that the use of a resident agent would benefit those who seek insurance protection under the reciprocal plan as well as further the State's supervision and control over the conduct of the insurer within its borders with respect to the property of its citizens.

The same considerations apply equally to the requirement that an office be maintained in the State. No reason appears why any of the representatives termed "engineers" by appellants could not meet the qualifications and be licensed as an agent. These representatives perform the functions incidental to the procuring, service and performance of the contract which the statute aims to bring into the hands of residents. Nothing indicates that the State's sole aim is to secure commissions for local residents, nor does Section 110 (3) fasten a commission system of compensation upon the use of such agents.

Section 168 (2)

This is the statute prescribing for use in New York State a standard form of fire insurance contract. Appellants ad-

dress their argument in this Court to its provisions as amended by Chapter 900 of the Laws of 1942, effective July 1, 1943, contending that it carries forward the objectionable features of the present statute. The objection is primarily to the requirement that a premium be stated and generally that they cannot "conform in all particulars" to the form prescribed "without completely destroying the plan of insurance." No specific objections are addressed to the stipulations of the contract form designed to make uniform and exact the basic rights and duties of the parties thereunder and the coverage extended thereby.

What we have previously said concerning terminology is pertinent here. Subdivision 2 permits reciprocal insurers to include regulations appropriate to or required by their form of organization. Thus, their policies may state clearly just what the consideration for their insurance is. The contract provision obviously relates to what appellants term "deposits." The definition of "premium", given in relation to taxation provisions (Sec. 550 (1)) as including "premium deposits", gives clear indication that the Legislature has used the term broadly and with knowledge of its varying applications. No prejudice to appellants appears from the necessity of using the term "premiums" in their policy. The deposit is intended to cover the cost of the insurance with a possibility of a refund or additional expenses to be determined on the basis thereof. It does not alter the reciprocal nature of the insurance or preclude the inclusion of the full provisions relating thereto.

The amended statute in subdivision 6 contains express permission to substitute any more accurate descriptive term for the word "company" in the policy.

Section 410 (1)
Section 415 (1d)

These sections deal with the powers of the advisory committee and its manner of election. Section 410 (1) refers to an advisory committee chosen by the subscribers having ultimate power and responsibility "subject to the articles of association and subscribers' agreement". It must be read in connection with Section 415 (1e) which requires specification in the subscribers' agreement of the powers of the advisory committee, including the power to regulate the powers and duties of the attorney in fact "if not specifically provided in the subscribers' agreement". No objection can be seen to giving the subscribers, who are the real insurers, power to prescribe the authority of their governing committee and, through such committee or directly, that of their attorney in fact.

Clearly, also, there can be no objection to a provision reasonably designed to insure full opportunity to have a voice in an annual election of members of the advisory committee.

Section 415 (1)

The requirement as to the execution of the power of attorney is obviously designed to avoid question as to its validity and difficulties of proof should a subscriber need to bring action in the assertion of his rights. It has a clearly apparent relation to assuring the individual subscriber the means of enforcing the obligations of those with whom he contracts for insurance coverage.

Section 413 (2)

The special contingent surplus provided by Section 413 (2) is a proper requirement for a minimum reserve protected from impairment by dividends, refunds or withdrawals. Its real purpose and effect is to require the maintenance of a reserve which cannot be depleted by wholesale withdrawal of subscribers and the funds included in their operating reserves. It insures to the reciprocal as a going concern a limited but certain and protected fund safe from depletion and is a proper protective measure.

Conclusion.

Appellants' activities in the State of New York and their authorization to do business therein under its statutes, have brought them within the orbit of the State's protective jurisdiction with respect to its local interests. The applicable regulations are reasonable and do not exceed the bounds of the State's lawful concern. The judgment of the Court of Appeals should be, in all respects, affirmed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

No. 358.—October Term, 1942.

Hoopeston Canning Co., E. Pritchard, Inc., et al., Appellants, *vs.* Thomas J. Cullen, Superintendent of Insurance of the State of New York, et al. } On Appeal from the Supreme Court of the State of New York, Albany County.

[March 1, 1943.]

Mr. Justice Black delivered the opinion of the Court.

The New York Insurance Law (Cons. Laws, ch. 28), as amended in 1939, provides a comprehensive and detailed plan for regulation of all types of insurance and insurance companies "doing an insurance business" (§ 41) in that state. Article 12, applicable to reciprocal insurance associations, defines them as aggregations of persons, firms, or corporations, who under a common name engage in the business of exchanging contracts of insurance on the reciprocal plan through an attorney in fact.[1]

The issue in this case is whether the appellants, reciprocal insurance associations which insure against fire and related risks and whose attorneys in fact are located in Illinois, may constitutionally be made subject to the laws of New York as a condition of insuring property in that state. The New York Law, § 422, requires that these cooperative insurance associations must obtain a license or be prohibited from doing "any act which effects, aids or promotes the doing of an insurance business" in New York, § 410(2). As a condition of the license, submission to the New

[1] Inter-insurance, or reciprocal insurance, has been described as "that system of insurance whereby several individuals, partnerships and corporations underwrite each other's risks against loss by fire or other hazard, through an attorney in fact, common to all, under an agreement that each underwriter act separately and severally, and not jointly with each other." 58 Central L. J. 323. The nature of the business of these particular reciprocals is fully discussed in the opinion of the court below and is described to some extent in this opinion. The opinion of the trial court is reported at 25 N. Y. Supp. 2d 312; the opinion of the Appellate Division is reported at 262 App. Div. 446; and the opinion of the Court of Appeals is reported at 288 N. Y. 291. For a general discussion of the nature of inter-insurers and some of their legal problems, see 94 A. L. R. 836.

York regulations is required. The appellants contend that the law as applied to them violates the due process and equal protection clauses of the Fourteenth Amendment. They raised these questions appropriately in a declaratory judgment action in New York state courts, the Court of Appeals upheld the law, and the case is here on appeal under § 237(a) of the Judicial Code.

These reciprocals have been annually licensed to do business in New York since 1930 and allege that they are "desirous of qualifying under the valid provisions of the Insurance Law of 1939, and of securing a license thereunder." More than 50,000 contracts affecting New York state risks have been executed since the reciprocals began business, and the gross payments made by New York concerns as premiums or deposits amounted to more than $2,000,000 for the period from 1931 to 1938. The total of premiums or deposits from insurance affecting New York property is more than that from Illinois, the state in which the associations have their headquarters and whose laws they insist must govern their contracts.

Two principal contentions are urged against the constitutionality of the New York law as applied to these reciprocals: (a) Since the contracts of insurance are signed in Illinois and losses are paid by checks mailed from that state, the associations do no business in New York which therefore has no power to regulate them. (b) Assuming that New York does have general power to regulate, nevertheless certain of the provisions of the statute do not accord with due process and deny equal protection of the law.

First. Business in New York. Assuming that the formalities of contract are carried on in Illinois, the issue remains whether the insurance enterprise as a whole so affects New York interests as to give New York the power it claims.

In determining the power of a state to apply its own regulatory laws to insurance business activities, the question in earlier cases became involved by conceptualistic discussion of theories of the place of contracting or of performance.[2] More recently it has been recognized that a state may have substantial interests in the business of insurance of its people or property regardless of these isolated factors. This interest may be measured by highly realistic considerations such as the protection of the citizen

[2] Allgeyer v. Louisiana, 165 U. S. 578, 587. See, A Factual Approach to the Constitutional Law Aspect of the Conflict of Laws, 35 Col. L. R. 751. Cf. Frene v. Louisville Cement Co., — F. 2d —.

insured or the protection of the state from the incidents of loss. *Alaska Packers Association* v. *Industrial Accident Commission*, 294 U. S. 532, 542. To insure the protection of state interests it is now recognized that a state may not be required to enforce in its own courts the terms of an insurance policy normally subject to the law of another state where such enforcement will conflict with the public policy of the state of the forum. *Griffin* v. *McCoach*, 313 U. S. 498.[3]

The actual physical signing of contracts may be only one element in a broad range of business activities. Business may be done in a state although those doing the business are scrupulously careful to see that not a single contract is ever signed within that state's boundaries.[4] Important as the execution of written contracts may be, it is ordinarily but an intermediate step serving to tie up prior business negotiations with future consequences which themselves are the real object of the business transaction.

The facts of the instant case give clear proof of these statements. The contracts are made in this way: A canner or wholesale grocer in New York signs an application to become a "subscriber". This is sent to the attorney in fact at the head office in Chicago. One of a group of insurance engineers may be sent to New York to investigate the risk, and if accepted, the applicant signs a power of attorney and sends it and the application back to the attorney in fact. The attorney in fact then issues a policy of inter-insurance which is mailed to the subscriber in New York, and the subscriber thus becomes the insurer and the insured. The insurance engineers may visit the subscriber from time to time to encourage the reduction of fire hazards or to investigate the cause and extent of losses, and on such trips the engineer may give information concerning the enterprise to prospective participants, although he does not actively solicit business. The contracts reserved the right of the reciprocals to go into New

[3] This rule was not applied where the state had no actual contact with the insurance contract; i. e., where neither the original insured nor the company were residents of the state, the property insured was elsewhere, and the contract was made elsewhere. Home Insurance Co. v. Dick, 281 U. S. 397. Cf. Kryger v. Wilson, 242 U. S. 171, where, under similar circumstances, a state was entitled to apply its own law in a non-insurance situation where the property which was the subject of the litigation was within its bounds.

[4] International Harvester v. Kentucky, 234 U. S. 579. For an example of the refusal of a court to permit evasion of the law of a state by a contract made just over its borders, see Ocean A. & G. Corp. v. Industrial Commission, 32 Arizona 275, 285.

York to repair, rebuild, or replace lost or damaged property. Cf. *Lumbermen's Insurance Co.* v. *Meyer*, 197 U. S. 407, 417. Surely the object of all this activity is not the signing of a contract or a check, but the protection of property and payment of indemnity in case of loss by fire. These business transactions neither begin nor end with the contract.

The intimacy of the relation of these insurance contracts to the state of New York becomes even more apparent when it is remembered that the property insured is in the state of New York. The states have long held great authority over property within their borders. A state may make flood control, quarantine, conservation and zoning regulations affecting property within its bounds. It is the source of law for the forms of conveyances, for the nature of covenants, future interests and easements, for the construction of wills, trusts, and mortgages, and for many other legal principles affecting property interests. Contracts formally made in other states may remain subject to the law of the state of the situs of the property, particularly in respect to immovables.[5] There is no more reason to bar the state from authority over the insurance of the property within it than to exclude it from control of all the other property interests mentioned.

The appellants draw counter conclusions from *Allgeyer* v. *Louisiana*, 165 U. S. 578, and the cases which follow it. While the wisdom of the *Allgeyer* case has occasionally been doubted, it is in any case clearly distinguishable here. In that case, no act was done in the state of Louisiana except that of mailing a letter advising the insurance company of a shipment of goods, the goods themselves were in the state only temporarily, and the insurance company never purported to do business in the state. In the instant case, the reciprocals have the many actual contacts with the New York subscribers and the New York property outlined above, much of the insurance covers permanent immovables, and the reciprocals have been licensed to do business there for years. The *Allgeyer* and subsequent insurance cases have been recently considered in *Griffin* v. *McCoach*, *supra*, at 506, 507 and in *Osborn*

[5] Carpenter *v.* Strange, 141 U. S. 87, 106; Watkins *v.* Holman, 16 Pet. 25, 57; Fall *v.* Eastin, 215 U. S. 1, 9, 12; *cf.* Union Transit Co. *v.* Kentucky, 199 U. S. 194; Curry *v.* McCanless, 307 U. S. 357, 363; Graves *v.* Elliott, 307 U. S. 383. For a discussion of this subject, see Cook, 'Immovables' and the 'Situs', 52 Harvard L. Rev. 1246.

v. *Ozlin,* 301 U. S. 53, 66; as the analysis in those opinions clearly indicates, the *Allgeyer* line of decisions cannot be permitted to control cases such as this, where the public policy of the state is clear, the insured interest is located in the state, and there are many points of contact between the insurer and the property in the state.

We conclude that in determining whether insurance business is done within a state for the purpose of deciding whether a state has power to regulate the business, considerations of the location of activity prior and subsequent to the making of the contract, *Osborn* v. *Ozlin, supra,* of the degree of interest of the regulating state in the object insured, and of the location of the property insured are separately and collectively of great weight. Applying any of these tests, it is apparent that the reciprocals are doing business in New York and are thereby subject to regulation by that state.

Second. Validity of the Regulations. The assailed requirements are in substance these.[6] Reciprocals' subscribers in every state must execute their powers of attorney in accordance with specified forms and a standard form of contract must be used by all subscribers wherever they are located. Certain forms of accounting are also required. Advisory committees of the subscribers themselves, rather than appointed attorneys in fact, must have ultimate powers of management of the reciprocals' affairs and must provide regulations for the control and custody of their funds. The advisory committee must be elected at an annual meeting of the suscribers, held after notice to them, where they can be present either in person or by proxy. Provision must be made for stipulated operating reserves for payment of losses, for a contingent liability of subscribers of not less than one nor more than ten times the amount of the annual premium expressed in the contract, and for a surplus to be maintained unimpaired. No subscriber is to be granted a secured or preferred claim against the operating reserve. No new agreements are to be made with subscribers who do not have net assets in excess of ten thousand dollars. At least one office must be maintained in New York and policies must be countersigned by a resident New York agent.

These regulations can not be attacked merely because they

[6] The sections of the Insurance Law which appellants contend are invalid are Sections 130, 168(2), 401(1), 412(1), 413(2), 415(1), 417(1), 418(1)(3), 420, 421, and 422(1).

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affect business activities which are carried on outside the state. Of necessity, any regulations affecting the solvency of those doing an insurance business in a state must have some effect on business practices of the same company outside the state. Nothing in the Constitution requires a state to nullify its own protective standards because an enterprise regulated has its headquarters elsewhere. The power New York may exercise to regulate domestic insurance associations may be applied to foreign associations which New York permits to conduct the same kind of business. The appellants can not, "by spreading their business and activities over other states . . . set at naught the public policy" of New York, *Atlantic & Pacific Tea Co.* v. *Grosjean*, 301 U. S. 412, 427. Where as here the state has full power to prescribe the forms of contract, the terms of protection of the insured, and the type of reserve funds needed, "the mere fact that state action may have repercussions beyond state lines is of no judicial significance." *Osborn* v. *Ozlin, supra*, at 62. Neither New York nor Illinois loses the power to protect the interests of its citizens because these associations carry on activities in both places. *Alaska Packers Association* v. *Industrial Accident Commission, supra.* We think the regulations themselves, since they are aimed at the protection of the solvency of the reciprocals or at promoting the convenience with which New York residents may do their insurance business, are all within the scope of state power. *Osborn* v. *Ozlin, supra*, at 65, 66.

It is argued that the provision requiring each new subscriber to have net assets of $10,000 violates the equal protection clause, but since each subscriber is also an insurer and other subscribers are dependent on his financial responsibility, there is no reason why the legislature might not think this provision necessary. It is also complained that different requirements have been put upon reciprocals than mutual companies; but we have previously held that a co-operative insurance company may be subject to separate classification for the purpose of determining how it shall be regulated. *German Alliance Ins. Co.* v. *Kansas*, 233 U. S. 389, 418. Cf. *Tigner* v. *Texas*, 310 U. S. 141. The provisions requiring an office in the state and counter signature of the contracts by an agent in the state are no more stringent than those approved in *La Tourette* v. *McMaster*, 248 U. S. 465.

The appellants earnestly insist that their's is a successful system of co-operative insurance which gives complete security with

substantial economy to their members, and that their New York subscribers may lose the benefits of this form of insurance by reason of the reciprocals' inability to comply with the requirements of the New York law. That the reciprocals save for their members from 25 to 50 per cent of the cost of ordinary commercial insurance and that the members are well satisfied with the system they have created is not controverted by counsel for the state of New York. However persuasive such arguments might be if addressed to the state legislature, they present no constitutional barrier which prevents New York from enforcing these regulations if it chooses.

Affirmed.

The CHIEF Justice and Mr. Justice JACKSON concur in the result.

Mr. Justice RUTLEDGE took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.